



SEP 1 2017

CAAC LETTER 2017-03

MEMORANDUM FOR CIVILIAN AGENCIES

FROM: WILLIAM CLARK
CHAIR
CIVILIAN AGENCY ACQUISITION COUNCIL (CAAC)

A blue ink signature of William Clark, written in a cursive style, is placed over the name and title.

SUBJECT: Class Deviation from the Federal Acquisition
Regulation (FAR) to exercise Special Emergency
Procurement Authorities

This CAAC letter is being issued to serve as consultation in accordance with FAR 1.404 authorizing agencies to issue a class deviation to implement Pub. L. 114-328. The law expands special emergency procurement authorities to facilitate defense against or recovery from cyber attack, provide international disaster assistance under the Foreign Assistance Act of 1961, and support for an emergency or major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

On December 23, 2016, the President signed into law the National Defense Authorization Act (NDAA) for FY 2017. Section 816 of that Act expanded the permissible uses of special emergency procurement authorities to include facilitating international disaster assistance and supporting domestic emergency or natural disaster relief efforts as defined by the Robert T. Stafford Disaster Relief and Emergency Assistance Act. In addition, Section 1641 of that same National Defense Authorization Act made special emergency procurement authorities applicable to defense against or recovery from a cyber attack. The NDAA was effective when enacted and was not contingent upon any implementing regulation.

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration have undertaken rulemaking to formally incorporate the coverage expanding special emergency procurement authorities into the FAR under FAR Case 2017-009, Special Emergency Procurement Authority. The attached FAR text

identifies the additions and deletions anticipated to implement Pub. L. 114-328 in the FAR. These changes will be published in the Federal Register. However, in the wake of the emergency and major disaster declaration made by the President for Hurricane Harvey, many agencies' contracting officers may be called on to aid in response and/or recovery efforts. Thus, pending publication of the amendment to the FAR via FAR Case 2017-009, agencies may authorize a class deviation to implement Pub. L. 114-328 (See Attachment).

This CAAC letter constitutes consultation with the Chair of the CAAC required by FAR 1.404(a)(1). Once processed, agencies are requested to share the deviation widely among their workforces to ensure full awareness of and compliance with Pub. L. 114-328. It is recommended that the deviation is made effective until the FAR amended by the FAR case.

Agencies are reminded that FAR 1.404 requires agencies to furnish a copy of each approved class deviation to the FAR Secretariat, General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW, 2nd Floor, ATTN: Joanne Sosa, Washington, DC 20405. Agencies may also email the deviation to GSARegSec@gsa.gov.

If you have any questions or require additional information about this Letter, please contact Camara Francis on (202) 550-0935 or at camara.francis@gsa.gov.

Attachment

Attachment - FAR Deviation Text

Baseline is FAC 2005-94, 2005-95, effective January 19, 2017.

Additions are **[bracketed]** and removals are ~~strikeouts~~.

Parts of the FAR unchanged are marked by * * * * *

PART 2—DEFINITIONS OF WORDS AND TERMS

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FAR 2.1—DEFINITIONS

2.101 Definitions. (DEVIATION 2017-03)

* * * * *

["Emergency" as used in 6.208, 13.201, 13.500, 18.001, 18.202, 18.203, and subpart 26.2 means an occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States (42 U.S.C. 5122).

"Major disaster" as used in 6.208, 13.201, 13.500, 18.001, 18.202, 18.203, and subpart 26.2 means any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or regardless of cause, any fire, flood, or explosion, in any part of the United States, which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby (42 U.S.C. 5122).]

"Micro-purchase threshold" means \$3,500, except it means—

(1) For acquisitions of construction subject to [40 U.S.C. chapter 31](#), subchapter IV, Wage Rate Requirements (Construction), \$2,000;

(2) For acquisitions of services subject to [41 U.S.C. chapter 67](#), Service Contract Labor Standards, \$2,500; and

(3) For acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from [cyber,] nuclear, biological, chemical or radiological attack[; international disaster assistance (22 U.S.C. 2292 *et seq.*); an emergency, or major disaster (42 U.S.C. 5122),] as described in [13.201\(g\)\(1\)](#), except for construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction) ([41 U.S.C. 1903](#))—

(i) \$20,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and

(ii) \$30,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States.

“Simplified acquisition threshold” means \$150,000, except for—

(1) Acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from [cyber,] nuclear, biological, chemical, or radiological attack[; international disaster assistance (22 U.S.C. 2292 *et seq.*); an emergency or major disaster (42 U.S.C. 5122),] ([41 U.S.C. 1903](#)), the term means—

(i) \$750,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and

(ii) \$1.5 million for any contract to be awarded and performed, or purchase to be made, outside the United States; and

(2) Acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a humanitarian or peacekeeping operation ([10 U.S.C. 2302](#)), the term means \$300,000 for any contract to be awarded and performed, or purchase to be made, outside the United States.

PART 10—MARKET RESEARCH

10.001 Policy. (DEVIATION 2017-03)

(a) Agencies shall—

(1) Ensure that legitimate needs are identified and trade-offs evaluated to acquire items that meet those needs;

(2) Conduct market research appropriate to the circumstances—

(i) Before developing new requirements documents for an acquisition by that agency;

(ii) Before soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold;

(iii) Before soliciting offers for acquisitions with an estimated value less than the simplified acquisition threshold when adequate information is not available and the circumstances justify its cost;

(iv) Before soliciting offers for acquisitions that could lead to consolidation or bundling ([15 U.S.C. 644\(e\)\(2\)\(A\)](#) and [15 U.S.C. 657g](#));

(v) Before awarding a task or delivery order under an indefinite-delivery/indefinite-quantity (ID/IQ) contract (*e.g.*, GWACs, MACs) for a noncommercial item in excess of the simplified acquisition threshold ([10 U.S.C. 2377\(c\)](#)); and

(vi) On an ongoing basis, take advantage (to the maximum extent practicable) of commercially available market research methods in order to effectively identify the capabilities of small businesses and new entrants into Federal contracting that are available in the marketplace for meeting the requirements of the agency in furtherance of—

(A) A contingency operation or defense against or recovery from [cyber,] nuclear, biological, chemical, or radiological attack; and

(B) Disaster relief to include debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities (see [26.205](#)); and
(3) * * * * *

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PART 12—ACQUISITION OF COMMERCIAL ITEMS

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SUBPART 12.1—ACQUISITION OF COMMERCIAL ITEMS—GENERAL

* * * * *

12.102 Applicability. (DEVIATION 2017-03)

(a) * * * * *

(b) * * * * *

(c) * * * * *

(d) * * * * *

(e) * * * * *

(f)(1) Contracting officers may treat any acquisition of supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from [cyber,] nuclear, biological, chemical, or radiological attack, as an acquisition of commercial items.

(2) A contract in an amount greater than \$19 million that is awarded on a sole source basis for an item or service treated as a commercial item under paragraph (f)(1) of this section but does not meet the definition of a commercial item as defined at FAR 2.101 shall not be exempt from—

(i) Cost accounting standards (see subpart 30.2); or

(ii) Certified cost or pricing data requirements (see 15.403).

(g)(1) * * * * *

Subpart 13.2—Actions At or Below the Micro-Purchase Threshold

13.201 General. (DEVIATION 2017-03)

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(g)(1) For acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from [cyber,] nuclear, biological, chemical, or radiological attack;~~;~~ **international disaster assistance; an emergency or major disaster,** the micro-purchase threshold is ~~—~~**[—]**

(i) \$20,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and

(ii) \$30,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States.

(2) Purchases using this authority must have a clear and direct relationship to the support of a contingency operation or the defense against or recovery from [cyber,] nuclear, biological, chemical, or radiological attack~~;~~ **international disaster assistance; an emergency or major disaster**].

(h) When using the Governmentwide commercial purchase card as a method of payment, purchases at or below the micro-purchase threshold are exempt from verification in the System for Award Management database as to whether the contractor has a delinquent debt subject to collection under the Treasury Offset Program (TOP).

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Subpart 13.5—Simplified Procedures for Certain Commercial Items

13.500 General. (DEVIATION 2017-03)

(a) * * * * *

(b) * * * * *

(c) Under [41 U.S.C. 1903](#), the simplified acquisition procedures authorized in this subpart may be used for acquisitions that do not exceed \$13 million when—

(1) The acquisition is for commercial items that, as determined by the head of the agency, are to be used in support of a contingency operation or to facilitate the defense against or recovery from [cyber,] nuclear, biological, chemical, or radiological attack[; international disaster assistance; an emergency or major disaster];or

(2) The acquisition will be treated as an acquisition of commercial items in accordance with [12.102\(f\)\(1\)](#).

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PART 18—EMERGENCY ACQUISITIONS

18.000 Scope of part. (DEVIATION 2017-03)

(a) This part identifies acquisition flexibilities that are available for emergency acquisitions. These flexibilities are specific techniques or procedures that may be used to streamline the standard acquisition process. This part includes—

(1) Generally available flexibilities; and

(2) Emergency acquisition flexibilities that are available only under prescribed circumstances.

(b) The acquisition flexibilities in this part are not exempt from the requirements and limitations set forth in FAR [\[p\]Part 3](#), Improper Business Practices and Personal Conflicts of Interest.

(c) Additional flexibilities may be authorized in an executive agency supplement to the FAR.

18.001 Definition. (DEVIATION 2017-03)

“Emergency acquisition flexibilities”, as used in this part, means flexibilities provided with respect to any acquisition of supplies or services by or for an executive agency that, as determined by the head of an executive agency, may be used—

(a) In support of a contingency operation as defined in [2.101](#);

(b) To facilitate the defense against or recovery from [cyber,] nuclear, biological, chemical, or radiological attack against the United States; or

[(c) In support of a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate the provision of international disaster assistance; or]

(e[d]) When the President issues an emergency declaration, or a major disaster declaration.

Subpart 18.2—Emergency Acquisition Flexibilities

18.201 Contingency operation.

18.202 Defense or recovery from certain attacks [events]. (DEVIATION 2017-03)

(a) *Micro-purchase threshold.* The threshold increases when the head of the agency determines the supplies or services are to be used to facilitate defense against or recovery from [cyber,] nuclear, biological, chemical, or radiological attack[; international disaster assistance; an emergency or major disaster]. (See 2.101.)

(b) *Simplified acquisition threshold.* The threshold increases when the head of the agency determines the supplies or services are to be used to facilitate defense against or recovery from [cyber,] nuclear, biological, chemical, or radiological attack[; international disaster assistance; an emergency or major disaster]. (See 2.101.)

(c) ~~Commercial items to facilitate defense and recovery~~**[Treating certain items as commercial]**. Contracting officers may treat any acquisition of supplies or services as an acquisition of commercial items if the head of the agency determines the acquisition is to be used to facilitate the defense against or recovery from [cyber,] nuclear, biological, chemical, or radiological attack[; international disaster assistance; an emergency or major disaster]. (See 12.102(f)(1) and 13.500(c).)

(d) *Simplified procedures for certain commercial items.* The threshold limits authorized for use of this authority may be increased when it is determined the acquisition is to facilitate defense against or recovery from [cyber,] nuclear,

biological, chemical, or radiological attack[; international disaster assistance; an emergency or major disaster]. (See [13.500\(c\)](#).)

Subpart 26.2—[Major] Disaster or Emergency Assistance Activities

26.200 Scope of subpart.

This subpart implements the Robert T. Stafford Disaster Relief and Emergency Assistance Act ([42 U.S.C. 5150](#)), which provides a preference for local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities.

26.202 Local area preference. (DEVIATION 2017-03)

[(a)] When awarding emergency response contracts during the term of a major disaster or emergency declaration by the President of the United States under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act ([42 U.S.C. 5121](#), *et seq.*), preference shall be given, to the extent feasible and practicable, to local firms. Preference may be given through a local area set-aside or an evaluation preference.

[(b)] When using the authority under the Stafford Act, see 2.101 for the authority to change the micro-purchase threshold and the simplified acquisition threshold.]
